

CHAPTER 9

FINAL ENVIRONMENTAL IMPACT STATEMENT

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9. FINAL ENVIRONMENTAL IMPACT STATEMENT

9-1 OVERVIEW

For a minimum period of ten (10) days following the public hearing, the general public is provided the opportunity to send written comments to the Department related to a project. Such comments are appended to, and become part of, the official hearing transcript record. All comments and issues raised at the hearing, transcript record, and any design, cost, environmental, and other changes occurring since the approval of the Draft Environmental Impact Statement (DEIS) must be considered and documented by the District as explained under the procedures herein.

The Final Environmental Impact Statement (FEIS) is submitted only after the District has completed a quality control review, and the Central Environmental Management Office (CEMO) has provided a technical and procedural review. CEMO coordinates its review with the District and upon CEMO approval the District submits the FEIS to the Federal Highway Administration (FHWA) or other Lead Federal Agency. Whenever FHWA is referenced hereinafter it may be exchanged with the Lead Federal Agency. A copy should also be sent to all cooperating agencies. The District also prepares a preliminary **Draft Record of Decision (DROD)** to submit to FHWA with the FEIS. The FEIS process is shown in **Figure 9.1**.

The FHWA Division Office will review the document and the **DROD** to assure that all issues have been resolved and all interagency agreements are complete. The **DROD** shall accompany the FEIS during the internal FHWA review process.

The FHWA Division Office will send copies of the approved FEIS, along with a transmittal letter, to the District. The FEIS is then filed by the District with the U.S. Environmental Protection Agency (EPA) in Washington for publication in the **Federal Register (FR)** for public availability.

Thirty (30) days after the EPA publishes the **Notice of Availability** in the **FR**, the FHWA Division Administrator may sign the **Record of Decision**, which also acts as Location and Design Concept Acceptance (LDCA).

After receipt of LDCA, a notice is published in a local newspaper by the District stating that LDCA has been granted on the project. The FEIS will be sent by the District to the Florida State Clearinghouse and all interested state and federal agencies utilizing the Environmental Screening Tool (EST).

Subsequent to LDCA and before the next phases of production, the FEIS is reevaluated in accordance with **23 CFR 771** to insure that there have been no new significant impacts from the project and that the document remains valid. The reevaluation procedure is discussed in **Part 1, Chapter 13, Reevaluations**.

9-2 PROCEDURE

9-2.1 Environmental Impact Statement Update

After the public hearing and subsequent ten (10) day comment period, the District revises the DEIS to describe the outcome of the public hearing, issues raised, and the Department's response, including design changes since approval of the DEIS. This is accomplished by updating and modifying the DEIS in accordance with the referenced chapters in **Part 2 of the PD&E Manual** as indicated below:

1. A Commitments and Recommendations section (**Part 2, Chapter 32, Commitments and Recommendations of the PD&E Manual**) is added to the DEIS, if not already a part of the DEIS and includes:
 - a. A list of commitments and recommendations made by the Department not contained in the Department's **Standard Specifications for Road and Bridge Construction**, including but not limited to, mitigation measures, design commitments, and pollution control measures.
 - b. Other commitments as deemed necessary.
2. Updating the Comments and Coordination section (**Part 2, Chapter 31, Comments and Coordination**) to include:
 - a. Summary of meetings held and including the public hearing(s). This includes places, times, participants, and issues raised.
 - b. Written and oral responses to comments and issues raised after approval of the DEIS and the public hearing.
3. Modification of all other sections of the document to reflect design, cost, or environmental changes since approval of the DEIS.
4. The Summary in the DEIS (**Part 2, Chapter 3, EIS Summary/FONSI of the PD&E Manual**) is revised to include:
 - a. A recommended alternative for construction.
 - b. A summary of all environmental impacts associated with the project including a statement of findings on all relevant impact categories (i.e., wetland, floodplain, coastal zone consistency).
 - c. A summary of the mitigation of impacts.

- d. A comparison of long-term versus short-term impacts.
- e. A discussion of irreversible and irretrievable commitment of resources.

9-2.2 Intradepartmental and FHWA Review Process

Processing the FEIS may begin after the 45-day public comment period for the **Federal Register Notice of Availability** has ended for the DEIS. The date is shown at the bottom of the cover page of the approved DEIS (see **Part 1, Chapter 8, Draft Environmental Impact Statement**).

After preparation of the FEIS, the District conducts a quality control review and sends the FEIS to CEMO. CEMO provides a technical and procedural review of the document (including and technical support documents and the **Draft Record of Decision**) and coordinates its comments and the review schedule with the District. The Districts should allow sufficient time in their schedules for potential subsequent reviews.

After the CEMO has completed their review and comments have been satisfactorily incorporated or addressed, CEMO will email their approval to the District. The FEIS, two (2) copies each of supporting reports, and one (1) copy of the public hearing transcript are then submitted by the District to FHWA. The Districts must contact the FHWA Division Office to determine the number of copies needed. All materials requiring an action from the Lead Federal Agency should be sent by the FDOT such as submittal of the FEIS and all supporting documentation. The FHWA Atlanta Regional Office provides a legal sufficiency review of the FEIS and depending on the magnitude of the project, the Division may also ask for review by the FHWA office in Washington DC (prior concurrence). These additional reviews may impact the project schedule. The District prepares a preliminary **Draft Record of Decision (DROD)** and submits it with the FEIS to FHWA. If there are cooperating federal agencies, the District submits two (2) copies of the FEIS to each agency for their review and comments. The cooperating agencies are sent technical documents that pertain to their jurisdiction. A sample transmittal letter from the District to FHWA should accompany the FEIS and related reports. This letter is provided in **Figure 9.2**.

Within thirty (30) days of receipt of the FEIS, FHWA and the cooperating agencies will provide comments to the District. The FHWA Division Office will issue one of the following three comments:

1. Review with comments,
2. A statement that the document is not ready for review, or
3. Prepares **DROD** and forwards for legal sufficiency review.

If comments are submitted by FHWA, or the cooperating agency, appropriate revisions are made by the District. This resets the intradepartmental and FHWA review process. Therefore, the revised FEIS is sent to CEMO and once approved is sent to FHWA for their approval.

9-2.3 Actions Taken After Adoption of the Final EIS

One (1) copy of the approved FEIS and a transmittal letter are forwarded by FHWA to the District. An example transmittal letter is shown in **Figure 9.5**. The District then fills in the date for which the formal review period for the document is completed on the cover page of the FEIS. The District makes copies of the FEIS for public availability and inspection and transmits the approved FEIS to federal, state, and local agencies, organizations, and individuals to whom the DEIS was previously sent or who submitted substantive comments on the DEIS (**Figure 9.4**), no later than the time the document is sent to EPA (**23 CFR 771.125**). The District may provide alternative circulation processes in accordance with **40 CFR 1502.19. Part 2, Chapter 34, List of Agencies, Organizations, and Persons to whom Copies of the Statement are Sent** contains the names and addresses of all agencies to whom the FEIS is sent including the appropriate number of copies. A notice of availability should also be published in the local newspaper(s). See **Part 2, Chapter 11, Public Involvement** for details on public notification.

The approved FEIS is uploaded to the Environmental Screening Tool (EST) by the ETDM Coordinator or Project Manager. When the document is uploaded into the document review tool, the EST automatically sends an electronic copy of the FEIS to the Florida State Clearinghouse and other contacts to which the Advance Notification was originally sent. The ETDM Coordinator or Project Manager may also send the document to other interested state and federal agencies. Email and physical addresses can be stored and organized in the EST. This feature allows documents to be sent electronically, or they may be printed out and mailed to other state and federal agencies, local agencies, Native American tribes, or public interest groups upon request. The ETDM Coordinator or Project Manager may copy the FEIS onto a CD for distribution. **The document must be transmitted to the cooperating agencies** (i.e., U.S. Coast Guard, U.S. Army Corps of Engineers). All organizations and agencies have a comment period of 30 days. All distribution of the document must occur before sending the request for the publication of the **Notice of Availability** in the **FR** to EPA.

The **Notice of Availability** is initiated when the District files the FEIS with the Office of Federal Activities, EIS Filing Section, EPA, Washington (**Figure 9.3**). Upon receipt of the document, EPA publishes notification of availability of the FEIS in the **FR** for a 30-day comment period.

In order for EPA to publish a **Notice of Availability** in the **Federal Register (FR)**, the District has to insure that EPA receives the FEIS by Wednesday noon of the week prior to publication of the notice in the **FR** on the following Friday (10 days ahead).. It is suggested that five (5) copies of the approved FEIS sent to EPA, Washington, D.C. be

mailed overnight express requiring a signature by the addressee (EPA) verifying receipt. Depending on delivery method to EPA, there are two different mailing addresses:

For deliveries in-person or by commercial express mail services, e.g., Federal Express or UPS, copies should be sent to:

US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Room 7220
1200 Pennsylvania Avenue, NW
Washington, DC 20004

For deliveries by US Postal Service (e.g. USPS Express Mail) copies should be sent to:

US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Mail Code 2252-A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

EPA will then publish the **Notice of Availability** in the **FR**. The District will monitor the **FR** for publication of the notice and place a copy of the **FR** notice in the project file.

After 30-days have elapsed after publication of the notice in the **FR**, the FHWA Division Office may sign the **Record of Decision (ROD) (Figure 9.6)**. By approving this document, FHWA grants Location and Design Concept Acceptance (LDCA). The FHWA Division Administrator will forward a copy of the **ROD** to the District including a transmittal letter indicating LDCA (**Figure 9.7**). The District forwards a copy of the LDCA transmittal letter to the Department's Federal-Aid Management Office.

Upon receipt of LDCA, a public notice is placed by the District in the same local newspaper used for public hearing notification to inform the public that the project has received LDCA from FHWA and that the project is being advanced to the next phase (**Part 1, Chapter 11, Public Involvement**).

Subsequent to LDCA, the project is to be reevaluated before advancing to future phases in accordance with **23 CFR 771** to insure that there have been no new significant impacts of the project not identified or addressed in the FEIS. **Part 1, Chapter 13, Reevaluations** provides more detail on reevaluations.

9-2.4 Guidance on Limitation of Claims Notice

Section 6002(a) of SAFETEA-LU [codified at **23 USC 139(1)**] includes a provision for limiting the time period for filing claims and seeking judicial review of permits, licenses, or approvals issued by federal agencies for a highway or public transportation capital project. The provision creates a statute of limitations period of 180 days for filing a challenge following publication of the notice in the **FR** of the agency action(s).

Upon submittal of a **DROD** and FEIS to FHWA for review, the District will discuss with the District legal office and the FHWA Division Office (FHWA) the need for publication of a 180 day limitation notice under **23 USC 139 (1)**. The determining factors in this decision will be the degree of controversy surrounding the project and the likelihood of litigation; and the anticipated time frames for advancing the project to maintain project schedules.

If the decision is made to publish a **Limitations of Claims Notice**, the District, upon approval of a Final **ROD** for a FEIS, will still publish a notice in a local newspaper stating that Location Design Concept Acceptance has been approved by FHWA. At the same time, the District will submit to FHWA the project information needed to publish the notice in the **FR**. FHWA will then submit the notice to the **FR**. The 180 day limitations period begins upon date of publication of the notice.

There may be occasions when associated federal agency approvals (**Clean Water Act** permit, Coast Guard permit, etc.) will be received at or around the same time as final **NEPA** approval. On those occasions, as part of the notice publication discussion, FHWA and FDOT will confer as to whether one combined notice should be published for the **NEPA** document and any associated federal agency actions. If other federal agency permits, licenses or approvals will be obtained at a later phase of the project, notice would be published at that time for the subsequent approval if the need is agreed to between FHWA and the FDOT.

9-3 REFERENCES

1. Federal Register. Environmental Impact and Related Procedures, FR Vol. 52, No. 167.
2. Federal Highway Administration. Technical Advisory T6640.8A. "Guidance for Preparing and Processing Environmental and Section 4(f) Documents". October 30, 1987.
3. Council of Environmental Quality. 1978. Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act. 43 CFR 55978-56007 and 40 CFR 1500-1508.

4. Memorandum titled, "Florida-Meeting with U.S. Coast Guard", from FHWA Highway Safety and Environmental Coordinator to FHWA Assistant Division Administrator (Copy to C. L. Irwin), September 2, 1988.
5. Memorandum of Agreement Between the Department of Transportation and the Department of the Army, U.S. Corps of Engineers. 1983.
6. Federal-Aid Policy Guide, 23 CFR 771, Subchapter H - Right-of-Way and Environment, Part 771 - Environmental Impact and Related Procedures, December 9, 1991, Transmittal 1.
7. Memorandum titled, "Delegations of Authority to Division Administrators and State Directors", from FHWA Administrator Wykle to FHWA Division Administrators, May 13, 1998.
8. Memorandum titled, "Interim Guidance on the use of 23 USC part 193(1) Limitation on Claims Notices" from FHWA Acting Chief Counsel to FHWA Directors of Field Services, Division Administrators, and Federal Lands Highway Division Engineers, December 1, 2005

9-4 HISTORY

1/5/2009, 1/31/2007, 11/25/02, 7/12/2011

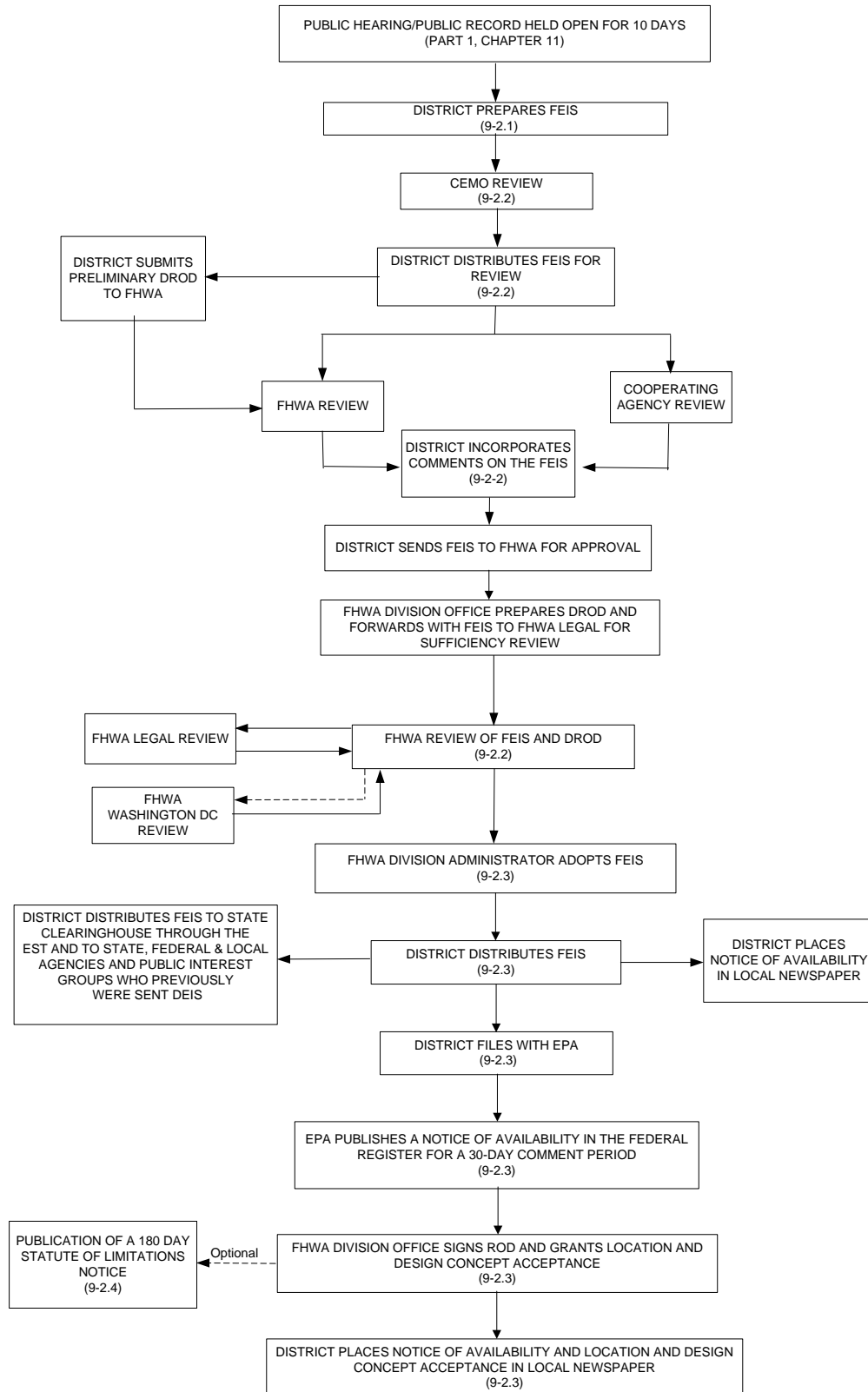


FIGURE 9.1 Final Environmental Impact Statement Process

(DATE)

Division Administrator
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Dear Mr./Ms.

Subject : Final Environmental Impact Statement
Financial Project Number XXXXX-XXXX
Federal-Aid Project No. X-XXX(X)-X
Any County, Florida

Enclosed are _____ copies of a Final Environmental Impact Statement for the subject project as required by the National Environmental Policy Act of 1969 and submitted in compliance with 23 CFR Part 771.

Transmitted is a copy of the transcript of the project location and design concept public hearing held on (date).

Also included is the preliminary Draft Record of Decision.

Please advise us of your actions so that we may proceed with the project.

Sincerely,

District Environmental Management Office

Enclosures
cc : District Federal-Aid Coordinator

FIGURE 9.2 Sample Transmittal Letter to FHWA for Final EIS and Public Hearing Transcript

(DATE)

U.S. Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby)
Mail Code 2252-A, Room 7220
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Subject : Final Environmental Impact Statement
(PROJECT NAME)
Financial Project Number XXXXX-XXXX
Federal-Aid Project No. X-XXX(X)-X
(NAME OF COUNTY), Florida

In accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508), we are transmitting five (5) copies of the Final Environmental Impact Statement for your use. Please publish a notice of this Final Environmental Impact Statement in the Federal Register per the provisions of 40 CFR 1506.10.

Sincerely,

District Environmental Management
Office

Enclosures

cc : FHWA / without enclosure

FIGURE 9.3 Example Transmittal Letter to EPA for Publication of FEIS Notice of Availability

(DATE)

(FEDERAL, STATE, OR LOCAL AGENCY)
(ADDRESS)

Mr./Ms.:

Subject : Final Environmental Impact Statement
(PROJECT NAME)
Financial Project Number XXXXX-XXXX
Federal-Aid Project No. X-XXX(X)-X
(NAME OF COUNTY), Florida

Pursuant to the National Environmental Policy Act of 1969, we are transmitting (insert number) copy(ies) of the subject document for your information. This distribution of the Final Environmental Impact Statement is being made on behalf of the Federal Highway Administration in accordance with Title 23, Code of Federal Regulation, Part 771.

Sincerely,

District Environmental Management
Office

Enclosures

cc : FHWA / without enclosure

*[NOTE: CONSULT PART 2, CHAPTER 34 FOR LIST OF AGENCIES AND
NUMBERS OF COPIES]*

FIGURE 9.4 Example Transmittal Letter for FEIS Distribution to Agencies

(DATE)

District Secretary
Florida Department of Transportation
Post Office Box 000
Any County, Florida

Attention: Mr./Ms.

Subject : Florida - Financial-Aid Project No. X-XXX(X)-X
Financial Project Number XXXXX-XXXX
Final Environmental Impact Statement (FEIS)
FHWA-FLA-EIS-85-06-F
Any County

The subject FEIS has been approved by our office on (date). Enclosed for your use is a signed copy of the document.

Your office should distribute the FEIS to all appropriate parties, including copies to the Environmental Protection Agency (EPA) for publication of availability in the Federal Register. A copy of the transmittal letter to EPA should be provided to us for proof of distribution.

The project may be advanced in a normal manner after the Record of Decision (ROD) is approved by our office. The ROD can be approved 30 days after the EPA publishes the availability of the Final EIS in the Federal Register.

Sincerely,

FHWA Division Administrator

Enclosure
cc:

**FIGURE 9.5 Sample Transmittal Letter from FHWA to the Department
Stating Approval of the FEIS**

Record of Decision

Name of Project

State Road No.: _____

Financial Project No.: _____

Federal Aid Project No.: _____

County: _____

Description: _____

This is the *Record of Decision (ROD)* for the above subject project identified in the _____ *Long Range Transportation Plan (LRTP)*, as adopted. The need and purpose for this project includes _____. This *ROD* is made pursuant to the _____ EIS which is hereby incorporated by reference.

Decision

The Federal Highway Administration (FHWA) Florida Division, in coordination with the Florida Department of Transportation (FDOT) and associated consultants and in accordance with the National Environmental Policy Act (NEPA) and associated laws, regulations, and orders, proposes the construction of _____. The selected alternative is _____. The _____ mile project will begin at _____ and will connect with _____. The location map for the selected alternative can be viewed on page _ of this *ROD*.

Background

Public Information meetings held on _____

The Public Hearing was Held on _____

Alternatives Considered

All alternatives, including the No-Build, were evaluated...

No-Build Alternative

The No-Build Alternative was evaluated as a possible alternative to the proposed project...

Transportation System Management

Transportation System Management (TSM) was also evaluated as a possible alternative...

Alternative Selected

Section 4(f) (If applicable)

Major Issues Considered

FIGURE 9.6 Sample Record of Decision

Measures to Minimize Harm

This project incorporates all practical measures to avoid or minimize environmental harm. Although some impacts will occur, every effort will be made to minimize impacts through the institution of feasible measures applicable to each situation. Numerous specific commitments have been made regarding...

Monitoring or Enforcement Program (If applicable)

The FDOT District _____ has committed, and therefore shall adhere to the following monitoring and enforcement measures for this project: ...

The FDOT Reevaluation Process serves to ensure compliance with all applicable Federal and State laws and regulations prior to the advancement of the project to the next major production phase. This process also provides the mechanisms by which commitments made during the project development process are identified, updated, and their status confirmed. Any new commitments or laws which may have come into effect since the approval of the original final environmental document are addressed in the Reevaluation. As a result, the environmental documentation on a project is always current with prevailing rules and regulations, as well as, any commitments resulting from the project development process, including permit requirements. FDOT District ____ tracks these commitments through a data base in order to manage and access the large and diverse amount of data in a timely manner.

Comments on Final Environmental Impact Statement

The *FEIS* was approved for circulation on _____ and the notice of its availability was published in the Federal Register on _____, with a request that comments be postmarked by _____. The FHWA, in coordination with the FDOT, has taken into consideration all pertinent correspondence, documents, and technical reports postmarked through _____. FDOT has adequately responded to all substantive comments received from interested parties regarding the content and accuracy of the *FEIS* and supporting studies for selection of _____ alternative.

Summary of Comments and Responses Concerning the FEIS

Include a matrix addressing comments

Conclusion

For the foregoing reasons, and based upon consideration of all the social, economic, and environmental evaluation contained in the *Final Environmental Impact Statement*, with the input received from other agencies, organizations, and the public; the Federal Highway Administration has determined that the *FEIS* preferred alternative (_____), namely _____ is hereby the selected alternative. Therefore it is my decision to adopt this alternative as the proposed action for this project.

Name
Florida Division Administrator

Date

FIGURE 9.6 Sample Record of Decision

(DATE)

District Secretary
Florida Department of Transportation
Post Office Box 000
Any City, Florida

Dear Secretary

Subject : Federal-Aid Project Number X-XXX(X)-X
Financial Project Number XXXXX-XXXX
Final Environmental Impact Statement (FEIS)
FHWA-FLA-EIS-85-08-F

We have signed the Record of Decision (ROD) for the subject project on (date). Enclosed is a copy of the ROD for your information and use.

Based on the approved ROD, location and design concept acceptance is hereby given for this project.

Sincerely,

FHWA Division Administrator

Enclosure

FIGURE 9.7 Sample Transmittal Letter from FHWA to Department Containing Location and Design Concept Acceptance